

**Before the  
Federal Communications Commission  
Washington, DC 20554**

|   |   |                      |
|---|---|----------------------|
| In the Matter of                                  | ) |                      |
|   | ) |                      |
| Amendment of Parts 73 and 74 of the Commission's) | ) | MB Docket No. 03-185 |
| Rules to Establish Rules for Digital Low Power    | ) |                      |
| Television, Television Translator, and Television | ) |                      |
| Booster Stations and to Amend Rules for Digital   | ) |                      |
| Class A Television Stations                       | ) |                      |

To: The Commission

**MOTION FOR STAY**

The National Translator Association ("NTA") hereby requests that the Commission stay the effectiveness of paragraphs 23 through 35 of the Second Report and Order, FCC 11-110, released July 15, 2011, in the above-captioned proceeding ("Order"). NTA will timely file a Petition for Reconsideration of various aspects of the Order. This Motion for Stay, however, is being filed because of the extremely short time afforded out-of-core translators to implement the specified paragraphs of the Order. There is no compelling reason for the abrupt imposition of such a short time frame, because an effective procedure--which enables the full deployment of wireless in a timely manner--is already in place and has been working satisfactorily.

Paragraphs 23 through 35 of the Order establish transition dates for television translator stations and low power stations currently operating out of the core, with a final termination date of December 31, 2011. With the release of this Order on July 15, 2011 (after 8:00 P.M.), the deadlines of September 1, 2011, and December 31, 2011, are unworkable (indeed impossible if the Order is not published in the Federal Register by

July 31, as the Order is not effective until 30 days after publication).

NTA is dedicated to the provision of free over-the-air television service to all areas that do not receive adequate coverage from a full complement of primary broadcast stations. Its membership includes, but is not limited to, owners and operators of TV translator stations that rebroadcast the signals of full-service television stations. The unworkable deadlines specified in the Order directly and adversely affect many of the members of our Association.

### **Standard for Review of a Motion for Stay**

The Commission requires that a movant for stay must make a showing in four areas:

1. that the movant is likely to succeed on the merits;
2. that the movant will suffer irreparable injury absent a stay;
3. that the grant of the stay would not substantially harm other interests; and
4. that the grant of a stay is in the public interest..

Not all factors are equal because “the relative importance of the four criteria will vary depending on the circumstances of the case.” *Telecommunications Relay Service*, 23 FCC Red. at 1706-07. Although the Commission will weigh all four factors, not all factors need to be addressed by a movant in all cases, depending on the circumstances. As the Commission held, if there is a particularly overwhelming showing in at least one of the factors, the Commission may find that stay is warranted. *Aviation Radio Service*, 26 FCC Red. at 687 n.16. As the Commission noted in Paragraph 25 of the Order, an estimated 300 translator stations are affected by the September 1, 2011, deadline.

### **Success on the Merits**

There is not sufficient time to meet the deadline and, in fact, it is possible that the deadline will pass before the Rule becomes effective, even if Petitions for Reconsideration were not filed. The Order was released on July 15. The usual time, depending on when a document is forwarded to the Federal Register for publication, is 2+ weeks from the date of FCC release to the date of publication in the Federal Register. That places publication on or around July 31, at best. The ordering paragraph in the Order specifies the effective date to be 30 days after Federal Register publication or (assuming Federal Register publication On July 31) an effective date of Tuesday, August 30. That leaves 2 days to the deadline. As the Commission notes in Paragraph 33 of the Order, an out-of-core translator must find a new channel and file an application for that channel. There is more to it than that.

First, the station must locate a channel. There is no easy way to do that, and none of the Commission's engineering programs released to the public provide a straightforward path to channel selection. Three hundred (300) stations need to engage a consulting engineer to make the selection and prove noninterference to incumbent stations. When a channel is found, it might require a change in site, which requires negotiation. Even if no new site is required, many translators, especially in the West, share sites with other stations. A change in frequency will require new interference calculations at the site, as well as calculation of outgoing interference to other non-co-located stations. (The engineering members of the NTA Board of Directors report that finding available in-core channels in some areas has become a complex and time-consuming process.) Assuming, however, that a suitable channel can be identified, each

of 300 stations must file by September 1, 2011, for a new channel. Applications must be processed before equipment is ordered. A licensee would be foolhardy to order equipment before its application is granted. Plus, under the Rules, any change in frequency--even a displacement change--must be put on a 30-day grant list. By now, it is late November. Work at tower sites in the mountains and on tall towers even in flat land becomes difficult due to inclement weather after October.

Finally, it is noted that a very workable procedure has been in effect for several years. When a wireless operator who has purchased currently-occupied 700 MHz spectrum is ready to construct, all it needs to do is give 120 days' notice to the incumbent.. Either the translator changes channel or it goes off the air. None of the commenters in this proceeding has said that 120 days to clear the band in a particular area is not sufficient time. Even that lead time, however, is not sufficient if all 300 stations have to move at once.

### **Irreparable Injury**

If the requested stay is not granted, irreparable injury will result when hundreds of translator stations do not--because they cannot-- meet the December 31, 2011, deadline, even if they are able to meet the September 1 deadline. Miss the deadline and the stations will have to cease broadcasting by December 31, 2011. This not only adversely affects the stations, but it adversely affects the members of the viewing public who depend on those stations for their television service. Grant of a stay will cause no irreparable injury to any wireless operator because, under the existing procedure, the specific frequency would be clear when the wireless operator actually initiates use of the spectrum. Economic conditions, not translators, inhibit wireless development.

### **Harm to Other Interests**

Favorable action on the requested stay will cause no harm to any current or prospective user of the spectrum. Each wireless company bought the exclusive right to use a particular slice of spectrum for a specified purpose and, as has been noted, all it takes is 120 days' notice to an incumbent translator to clear that particular slice of spectrum.

### **Public Interest Considerations**

With an effective method in place to timely clear the wireless band segments, the public interest clearly lies on the side of the translator. The translator is there to provide a service to the public, not to make money. Remove the translator and you remove the ability of members of the public to receive over-the-air television. Why? To add a few days for the convenience of a wireless service. No commenter has said that the current transition system is not working. Until it is shown that a wireless operator could offer a service substantially faster than 120 days, there is no need for the Rule. Translators have been moving off 700 MHz in an orderly manner. The public interest lies in allowing that process to continue.

### **Conclusion**

A wireless operator need only give 120 days' notice under the existing procedure to use the spectrum it bought. There is no need to adopt a close-out date for translators and low power stations. Even if it could be shown that a date certain were necessary, the dates specified in the Order as adopted are way too short. It is impossible for 300 stations

to find new frequencies, complete arrangements, apply for and obtain authorizations, order and install equipment, and begin operations by December 31, 2011.

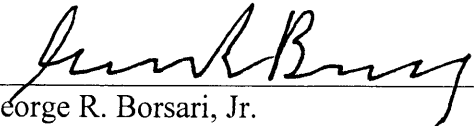
No party would be harmed or even inconvenienced by the grant of the requested stay. A significant segment of the public will be saved from the loss of free over-the air television service if a stay is granted.

Accordingly, for the reasons specified above, it is respectfully requested that the Commission stay the effectiveness of the deadlines specified in paragraphs 23-25 of the Order until the Commission has completed its review of Petitions for Reconsideration in this proceeding.

Respectfully submitted,

NATIONAL TRANSLATOR ASSOCIATION

By:

  
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July 21, 2011

**CERIFICATE OF SERVICE**

I, Anne Thomas Paxson, a partner in the law firm Borsari & Paxson, hereby  
certify that a true copy of the foregoing *Motion for Stay* was this 21st day of July 2011  
sent, via First Class United States Mail, postage prepaid, to each of the following:

Julius Genachowski, Chairman  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

Michael J. Copps, Commissioner  
Federal Communications Commission  
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Washington, DC 20554

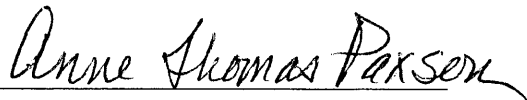
Robert M. McDowell, Commissioner  
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